

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

PIYA BROTHERS, INC. D/B/A
TRIANGLE FOOD MART

Plaintiff,

v.

NATIONWIDE INSURANCE COMPANY
OF AMERICA

Defendant.

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 4:15-cv-887

**AGREED MOTION TO SUBSTITUTE DEPOSITORS INSURANCE COMPANY
AS DEFENDANT AND TO AMEND CASE CAPTION**

Defendant Nationwide Insurance Company of America files this Agreed Motion to Substitute Depositors Insurance Company as Defendant and would respectfully show as follows:

1. Plaintiff initiated the present action by filing her Original Petition in the 48th Judicial District Court of Tarrant County, Texas on October 12, 2015. Plaintiff named Nationwide Insurance Company of America as Defendant in this action.

2. Nationwide Insurance Company of America did not issue the policy under which Plaintiff asserted the insurance claim at issue in this case.

3. At the time of the loss made the basis of the insurance claim at issue, Plaintiff's property was the subject of a policy issued by Depositors Insurance Company. *See* Exhibit A, declaration pages from Depositors Insurance Company policy. Nationwide Insurance Company of America was a stranger to this contract. As such, Depositors Insurance Company is the correct defendant in this matter, and Nationwide Insurance Company of America is not.

4. In the interest of justice, Defendant hereby requests that the Court substitute Depositors Insurance Company as Defendant in the present action and amend the caption of this case to reflect the change in the party-defendant. Counsel for Nationwide Insurance Company of

America has conferred with counsel for Plaintiff, and Plaintiff is agreed to the relief requested herein.

5. Counsel for Defendant Nationwide Insurance Company of America will represent Depositors Insurance Company in this matter, and all pleadings against and by Defendant Nationwide Insurance Company of America should be treated as having been filed against or on behalf of Depositors Insurance Company.

WHEREFORE, PREMISES CONSIDERED, Defendant Nationwide Insurance Company of America requests that this Court enter an Order substituting Depositors Insurance Company as Defendant in this matter in place of Nationwide Insurance Company of America, amending the caption of the case to identify Depositors Insurance Company and not Nationwide Insurance Company of America as Defendant in this matter, and for all such other and further relief to which it may show itself justly to be entitled.

Respectfully submitted,

/s/ Patrick M. Kemp

Patrick M. Kemp

Texas Bar No. 24043751

pkemp@smsm.com

Robert R. Russell

Texas Bar No. 24056246

rrussell@smsm.com

Lauren L. Burgess

Texas Bar No. 24082751

lburgess@smsm.com

Segal McCambridge Singer & Mahoney

100 Congress Avenue, Suite 800

Austin, Texas 78701

(512) 476-7834

(512) 476-7832 – Facsimile

**ATTORNEYS FOR DEFENDANT
DEPOSITORS INSURANCE
COMPANY**

AGREED AS TO FORM AND SUBSTANCE:

/s/ James McClenny (by permission RRR)

James McClenny
Texas Bar No. 24091857
james@vosslawfirm.com
Bill L. Voss
Texas Bar No. 24074043
bill.voss@vosslawfirm.com
Scott G. Hunziker
Texas Bar No. 24032446
scott@vosslawfirm.com
THE VOSS LAW FIRM, P.C.
26619 Interstate 45 South
The Woodlands, Texas 77380
(713) 861-0015
(713) 861-0021 – Facsimile

and

Brad Dickinson
brad@dblaws.com
Dickinson Bartlett, P.C.
4849 Greenville Avenue, Suite 1550
Dallas, Texas 75206
(214) 368-3055
(214) 368-3088 – Facsimile

**ATTORNEYS FOR PLAINTIFF
PIYA BROTHERS INC. D/B/A TRIANGLE
FOOD MART**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon the following counsel of record via CM/ECF on this 21st day of December, 2015:

James McClenny
Bill L. Voss
Scott G. Hunziker
THE VOSS LAW FIRM, P.C.
26619 Interstate 45 South
The Woodlands, Texas 77380

Brad Dickinson
Dickinson Bartlett, P.C.
4849 Greenville Avenue, Suite 1550
Dallas, Texas 75206

ATTORNEYS FOR PLAINTIFF

/s/ Patrick M. Kemp

Patrick M. Kemp